

## POINT PAPER

SUBJECT: Electronic Filing

PURPOSE: To advise the Chief Counsel about electronic filing standards and various agency positions regarding the use of such filing practices.

## FACTS:

- Electronic filing is the process by which information required by a court is delivered by electronic means rather than in the conventional paper form. Typically, any documents that normally become a part of the case file are considered information required by the courts.
- Judicial Conference standards are to govern technical matters. However, to date, there are no uniform Judicial Conference guidelines. In fact, the last proposed guidelines were established in February of 1998. These proposals were never formally accepted to be the Judicial Conference's standards on technical matters.
- Recently, a number of state courts have set forth proposals for a uniform electronic filing standard.<sup>1</sup>
- Fed. R. Civ. P. 5(e) states, in relevant part, "A paper filed by electronic means in compliance with a *local rule* constitutes a written paper for the purposes of applying these rules."<sup>2</sup> The 1996 amendment to Fed. R. Civ. P. 5(e) asserts that, "[A] district that wishes to establish electronic filing need no longer await Judicial Conference action."<sup>3</sup> This rule gives individual jurisdictions and agencies considerable latitude as to whether or not they will accept an electronic filing. The aforementioned position is evidenced by the fact that various agencies exercise different practices relating to electronic filing. Uniformity will occur only to the extent that local rules copy other local rules.
- The Merit Systems Protection Board (MSPB) utilizes a fill-in computer version to assist MSPB Administrative Law Judges in processing appeals.<sup>4</sup> The MSPB rules do not specifically state that electronic filing is acceptable. However, the MSPB web page makes reference to an appeal form available via computer that is considered to be an acceptable method by which appeals may be relayed to the appropriate Administrative Law Judge.

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<sup>1</sup> [www.ncsconline.org](http://www.ncsconline.org)

<sup>2</sup> Fed R. Civ. P. 5(e) (2002).

<sup>3</sup> Id. 1996 amendment

<sup>4</sup> [www.mspb.gov/whatsnew/pressreleases/pr08-10\\_fillin.html](http://www.mspb.gov/whatsnew/pressreleases/pr08-10_fillin.html)

- The Equal Employment Opportunity Commission (EEOC) does not permit electronic filing.<sup>5</sup>
- The Federal Labor Relations Authority (FLRA) does not allow electronic filing.<sup>6</sup>
- The Armed Services Board of Contract Appeals (ASBCA) does not permit any electronic filing. The appeal must be in writing.<sup>7</sup>
- The General Accounting Office (GAO) did experiment with electronic filing but has now abandoned the practice and does not permit electronic filing of any kind.<sup>8</sup>
- It is important to note that most agencies and districts are aiming toward an electronic filing system. However, most do not have the technological capabilities to realize this goal.

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<sup>5</sup> [www.eeoc.gov/facts/howtofil.html](http://www.eeoc.gov/facts/howtofil.html)

<sup>6</sup> 5 C.F.R. § 2422.5

<sup>7</sup> Rule 1(a) of ASBCA code

<sup>8</sup> [www.gao.gov/](http://www.gao.gov/)